

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

-----X  
LOCAL UNION NO. 580 of the INTERNATIONAL  
ASSOCIATION OF BRIDGE, STRUCTURAL,  
ORNAMENTAL AND REINFORCING IRON WORKERS,  
AFL-CIO AND  
TRUSTEES OF INTERNATIONAL ASSOCIATION OF  
BRIDGE, STRUCTURAL, ORNAMENTAL AND  
REINFORCING IRON WORKERS EMPLOYEE  
BENEFIT FUNDS,

Plaintiffs,

-against -

D.F.S. BROTHERS IRON WORKS, INC. a/k/a  
D.F.S. BROTHERS STEEL FABRICATORS, and  
MASPETH STEEL FABRICATORS, INC.,

Defendants.  
-----X

07 CIV 5463 (JSR)

DECLARATION OF DENIS A. ENGEL

DENIS A. ENGEL, a member of the firm of COLLERAN, O'HARA & MILLS L.L.P.,  
as attorney for plaintiffs, LOCAL UNION NO. 580 of the INTERNATIONAL ASSOCIATION  
OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON WORKERS,  
AFL-CIO ("LOCAL 580" or "UNION") AND TRUSTEES OF INTERNATIONAL  
ASSOCIATION OF BRIDGE, STRUCTURAL, ORNAMENTAL AND REINFORCING IRON  
WORKERS EMPLOYEE BENEFIT FUNDS ("TRUSTEES" or "FUNDS"), under penalties of  
perjury hereby declares as follows:

1. I have been lead counsel on the above captioned matter since its inception.
2. Former counsel to the Defendants, D.F.S. BROTHERS IRON WORKS a/k/a  
D.F.S. BROTHERS STEEL FABRICATORS and MASPETH STEEL FABRICATORS, Robert  
Tavon, has in the intervening months between the Court's last in-person conference and today,  
been suspended from the practice of law and has withdrawn from any involvement in the case.

3. On November 7, 2007, the Court issued an Order finding the Defendants in default of their discovery obligations for which the Court issued a judgment in favor of the Plaintiffs, and further directing the Defendants to submit to an audit of their books and records to determine the Defendants' joint and several liability for unpaid wages and benefits from October 1, 2005 to date. The Court retained jurisdiction over the matter to enforce the Order. (A copy of the Order is annexed as Exhibit "A".)

4. On November 8, 2007, I attempted to contact the Defendants to arrange for the audit. No response was forthcoming at that time. (A copy of a letter to Defendants is annexed hereto as Exhibit "B".)

5. On November 19, 2007, I informed the Court that the Defendants were non-responsive. (A copy of my letter to the Court is annexed as Exhibit "C".)

6. On November 30, 2007, the Court directed me to file the within Motion for Contempt, returnable on December 17, 2007 at 5:00 p.m.

7. On November 30, 2007, in an effort to conserve the Court's valuable time, I once again attempted to contact D.F.S./Maspeth, in the person of Dominick LoFaso.

8. Surprisingly, he answered my call and promised to submit to the audit, although he was not specific about when the audit would be conducted.

9. On December 3, 2007, after my many telephone calls to Mr. LoFaso went unresponded, I sent him, via facsimile, a letter requesting that he contact me immediately to arrange for the audit. (A copy of the December 3, 2007 letter is annexed as Exhibit "D".) No response has been forthcoming.


10. D.F.S./Maspeth has, for the life of this litigation, flouted the authority of the Court and utterly failed and/or refused to honor its obligations to the LOCAL 580 and the FUNDS.

This Motion for Contempt is but another attempt to seek compliance from unrepentent, recalcitrant litigants.

11. The Court's power to enforce its own Orders is unquestionable. In different circumstances the relief herein requested would be viewed as harsh. On the facts before us, after numerous attempts at gentler means of persuasion having failed, there appears no alternative. Defendants must be held in Contempt of Court and immediate consequences must be imposed.

**WHEREFORE**, Plaintiffs, having duly moved this Court, pray for an Order finding D.F.S. BROTHERS IRON WORKS a/k/a D.F.S. BROTHERS STEEL FABRICATORS and MASPETH STEEL FABRICATORS in Contempt of Court and further that the principals of the entities also be held in Contempt of Court and for such other and further relief as to the Court shall deem just, proper and equitable.

Dated: December 4, 2007  
Garden City, New York

  
DENIS A. ENGEL (DAE-7796)  
COLLERAN, O'HARA & MILLS L.L.P.  
Attorneys for Plaintiffs  
1225 Franklin Avenue, Suite 450  
Garden City, New York 11530  
(516) 248-5757

TO: Dominick LoFaso  
D.F.S. BROTHERS IRON WORKS, INC. a/k/a  
D.F.S. BROTHERS STEEL FABRICATORS, and  
MASPETH STEEL FABRICATORS, INC.  
58-15 58<sup>th</sup> Place  
Maspeth, New York 11378

Robert Tavon, Esq.  
Attorney for Defendant  
D.F.S. BROTHERS IRON WORKS, INC. a/k/a  
D.F.S. BROTHERS STEEL FABRICATORS, and  
MASPETH STEEL FABRICATORS, INC.  
5424 Arlington Avenue, Suite H63  
Riverdale, New York 10471